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## THE NAVIGATION ACTS AS APPLIED TO EUROPEAN TRADE

THE Navigation Act of 1660,<sup>1</sup> though aimed at the Dutch and intended to enable the English to displace them in the carrying-trade of the world, discriminated equally, with slight exception, against the merchant marine of every foreign power. The ships of continental Europe, and the few other international carriers that then existed, were excluded (1) from the import and export trade of the English colonial possessions in Asia, Africa, and America; (2) from importing into England the goods of the foreign parts of those continents; (3) from the English coastwise trade; and (4) certain restrictions were thrown about the importation into England of the products of Europe. Every one of these provisions affected European trade, but it is intended to discuss in this paper only the last, namely, the limitations laid by the Navigation Act of 1660 upon the importation of European commodities into England, involving the restrictions upon foreign and English carriers in this trade.

International commerce, as we know it in recent times, is in its characteristic condition when it takes place between independent countries, each having a merchant marine engaged in international carrying. Down to the latter part of the eighteenth century, Asia, Africa, and America consisted almost wholly either of colonial dependencies of Europe or of countries that possessed no transoceanic carriers and were in other respects considered beyond the pale, and it is not strange that trade with those continents should have been subjected to peculiar legislation. In England's restrictions upon commerce between herself and her rivals in their own commodities we find her attitude toward that trade which is most characteristically international. In addition, therefore, to a clear understanding of the principles that conditioned European trade for more than a century and a half, the question in hand has a curious significance in American history, for it furnishes a standard of comparison for England's attitude toward other powers—especially as a point of departure in determining whether England discriminated against, or

<sup>1</sup> The Navigation Acts of 1651 and 1660 are printed in part in William Macdonald, *Select Charters and other Documents Illustrative of American History, 1606-1775* (New York, 1899), 106 ff.

in favor of, the trade of the United States in 1783, when we took on an international status.

The act of 1660, much altered and in part repealed by innumerable acts, was not completely repealed until the nineteenth century was well begun. The sections of the act that contained the provisions restricting European trade remained in operation with slight modifications, some increasing the original severity, some relaxing it, down to 1822. These sections were then repealed; but a large part of the restrictions which they imposed were included in the consolidation act of that year and in that of 1825, were slightly altered in the act of 1833, and thereafter gradually relaxed by legislation and treaty until their final repeal in 1849.

What were the restrictions imposed by the Navigation Act of 1660 upon European trade? It is commonly stated that no European commodities could be brought into England except in English vessels or in vessels of the country of which the goods were the growth, production, or manufacture.<sup>1</sup> The severe principle thus stated is indeed to be found in the ordinance of 1651, which was in part virtually reënacted by the Restoration Parliament; but it is worth going carefully over the text of the two acts before concluding that the later one reënacted, in all their severity, the restrictions upon European trade contained in the ordinance.

Neither Europe nor the products of Europe are specifically mentioned in the text of the act of 1660. It has been commonly assumed that European commodities are included in the words "Commodities that are of forraigne growth" in section iv., and that section iv. ap-

<sup>1</sup> Such is the interpretation placed upon that act by Dr. William Cunningham, who says: "Another clause of the Acts excluded the Dutch from a carrying trade between England and the Mediterranean ports; since goods of foreign growth and manufacture were only to be imported in English ships, English-built and English-manned." *Growth of Industry and Commerce in Modern Times* (Cambridge, 1892), III. 111. This statement is omitted in the edition of 1903, but European trade under the two acts is still imperfectly treated. See Cambridge edition of 1903, 209, and note. Leone Levi makes a similar statement: "But Dutch ships regularly visited France, Germany, and other countries in Europe, to find freights for England; and from this trade also they must be excluded by providing that no goods or manufactures of Europe should be imported into Great Britain or her colonies except in British ships, or in ships of the countries to which such produce belonged." *The History of British Commerce* (London, 1872), 158. Professor Edward Channing takes the same view: "The sections numbered three, four and five were virtual repetitions of the Ordinance of 1651, and confined the trade from known places in Asia, Africa and America to English vessels navigated by Englishmen, and, as in the ordinance, European goods could be brought only in English vessels or vessels of the producing country, and then only from the usual places of shipment." "The Navigation Laws", in *American Antiquarian Society, Proceedings*, 1889-1890, 165. Such is also the interpretation of George Louis Beer, *The Commercial Policy of England toward the American Colonies* (Columbia University Studies, III., Part II.), 31; Edward P. Cheyney, *An Introduction to the Industrial and Social History of England* (New York, 1901), 193; and others.

plies the stated restriction. But the failure to make any such specific statement should be noticed, inasmuch as the ordinance of 1651 had provided specifically "That no Goods or Commodities of the Growth, Production or Manufacture of *Europe*" should be brought into England except in English vessels or in the vessels of the producing country. The absence of specific mention from the later act would not have so much weight, nor would it be so unreasonable to assume that the products of Europe were included in "Commodities that are of forraigne growth", if section iv. really provided that the "Commodities that are of forraigne growth" should only be imported in English ships or in ships of the producing country. It does not make this provision. The "Commodities that are of forraigne growth" are to be imported only "in English built shipping, or other shipping belonging to some of the aforesaid places". "Aforesaid places" cannot possibly include the countries of continental Europe, for they are not mentioned in this section nor in any preceding section of the act. Obviously, the aforesaid places are the English empire. Moreover, if section iv. had really contained the supposed provision and had applied it to all foreign commodities, including all the products of Europe, what reason was there for inserting section viii., which applies this provision to the goods of Russia and Turkey, and to some other enumerated European commodities? The true meaning of section iv. may be found by a glance at the ordinance of 1651.

That ordinance enacts (1) that no goods of Asia, Africa, or America shall be imported in any but English ships, and (2) that no goods of "Europe" shall be imported in any but English ships or in ships of the producing country; and after thus covering all foreign goods, there follows a section almost identical with section iv. of the act, which in that place is superfluous, except for the single additional restriction that the foreign commodities named in the preceding sections must come from ports of the producing country and from no other; the purpose being to prohibit ships, especially the English, from making up their cargoes in Holland and other European entrepôts instead of making the longer voyages to the original places of growth and production. This is the sole meaning of that section in the ordinance of 1651. If we apply the same interpretation to section iv. of the act of 1660, the expression "Commodities that are of forraigne growth" will include only the products of Asia, Africa, and America, which are the only commodities mentioned in the preceding part of the act. The tone of section iv. favors this interpretation. Its first lines are a perfunctory recital of the sense of the preceding section to designate the commodities

intended, ending with the phrase "as abovesaid", obviously referring to the preceding section; then follow the additional restriction and the penalty.

Section iv. being thus disposed of, the conclusion is, that the act of 1660 imposed no restrictions upon the importation of European commodities other than those of section viii. Hence, under that act, any European commodities could be brought from any European port into England by any ships whatever, except only the products of Russia and Turkey and the enumerated articles, which must come in English ships or in ships of the producing country.

Corroboration of this view must be looked for in the decisions of the courts. What was the interpretation of the act applied by the customs officers and the courts? Fortunately we have a very full and clear answer to that question by John Reeves in his handbook, written in 1791, for the use of the members of the Board of Trade:

The wording of the fourth section of the Act of Navigation is so general; that it was supposed by many to include ALL foreign goods or commodities whatsoever, and not to be confined, as it is now understood, to the goods and commodities of Asia, Africa, and America. It is true, this misconception does not appear to have prevailed with the courts, at least in any case which has come down to us; but it seems to have been so construed by the law officers of the customs. The following are examples of the progress made in ascertaining the true meaning of this clause.

In 20. *Car.* 2, an information was filed for importing Malaga wine in a ship not English, nor English-navigated. It was objected, for the defendant, that this section of the act, though general, was yet confined to the products of Asia, Africa, and America; for it related to the sections that went before. The chief baron *Hale* is made by the Reporter to say, that the subsequent sections might include Europe in some particular cases, *but not in the case now before us*; plainly intimating, that this section did not apply to the European trade, and that the clauses which did apply to the European trade did not make this case a cause of forfeiture.<sup>1</sup>

More than twelve years after this, we find a case stated for the opinion of the law-officers, which shows, that the officers of the customs still considered this section as affecting the European trade.<sup>2</sup>

The law-officers gave it as their opinion that hemp of the growth of Europe might be imported in English ships from Holland, though Holland was not the place of its growth, nor the port where it could only be, or usually had been, first shipped for transportation.<sup>3</sup> The point is, that the provision of section iv., that foreign goods must be shipped only from the producing country or from the place of usual

<sup>1</sup> This is the case of *Witheren vs. Robinson*, reported in Sir Thomas Hardres, *Reports of Cases Adjudged in the Court of Exchequer, 1655-1660* (London, 1693), 487.

<sup>2</sup> *A History of the Law of Shipping and Navigation* (Dublin, 1792), 126-127.

<sup>3</sup> *Ibid.*, 127-128.

shipment, does not apply to European goods, and that provision not being repeated in section viii., the ships privileged by the latter section might pick up the enumerated goods in any port, the restriction being as to vessels only and not as to the place of shipment.

But the officers of the customs seem still to have entertained doubts upon the extent of this section [section iv.] ; for in the year 1702 there were stated for the opinion of *Sir Edward Northey* two instances of Spanish wine imported from Portugal. To both these he answered that the fourth section of the Act of Navigation was confined to the sections which went before, and applied only to the goods of Asia, Africa and America ; and that the products of Spain might be brought from Portugal.<sup>1</sup>

In another place, speaking of the restrictions put upon European trade by section viii., Reeves says :

In the act of 1651 the whole of this trade was regulated ; and it was, in some respects, subjected to the same restrictions as those imposed on the trade of Asia, Africa and America, in the fourth section of the new act. But the Parliament now thought proper to subject only a portion of it to regulation ; the rest was left at large ; and in this respect some sacrifice was made to the interests of our commercial neighbors, who had complained so heavily of the partial spirit of the former act.<sup>2</sup>

After quoting section viii., he continues :

The prohibition to import, except only in English ships, or ships of the country whence the commodities come, does not, we see, extend by the present act, as it did by the old one, to all Europe, but is confined to the commodities of Russia and Turkey, and to the articles that are above<sup>3</sup> specially enumerated ; so that any European merchandize not there enumerated, and not of the growth, production, or manufacture of *Russia* or *Turkey*, may, by this act, be imported in a ship not English-built, nor of the country from whence the merchandize comes.<sup>4</sup>

All goods not especially enumerated or restricted could be imported in any ship whatever. This principle of the Navigation Act proved a stumbling-block to American statesmen for a considerable period following 1783. They did not grasp the difference in principle between the restrictions placed by the act upon European trade and its restrictions upon the trade of the other three-quarters of the world. They knew that the wording of the act was such that special British legislation was necessary to permit Americans to carry American products to England, and they supposed, in the absence of any new legislative permission, that they were entirely debarred from the European export trade to England. The fact was that the ships of the United States were on the same footing as the ships of any

<sup>1</sup> *Ibid.*, 128-129.

<sup>2</sup> *Ibid.*, 156-157.

<sup>3</sup> That is, in section viii., which he has just quoted.

<sup>4</sup> Reeves, 158.

European country in carrying to England the products of any other European country. Ignorance of this fact gave rise to one of our minor grievances against the British system. Jefferson, in his famous report of 1793, complains, "We can carry no article, not of our own production, to the British ports in Europe."<sup>1</sup> Madison<sup>2</sup> and Fitzsimons<sup>3</sup> had said the same thing in 1789 in the debates on tonnage discrimination. Tench Coxe had also<sup>4</sup> included it in his reply to Lord Sheffield. It remained for Lord Grenville to set the Americans right in 1797. The act of Parliament dated July 4, 1797, for carrying into effect the Jay treaty, virtually enacted into statute the orders in council under which the above objection had been made. Rufus King was consulted while the act was pending. Lord Grenville handed him a draft of the act, and King entered a lot of objections upon it. Grenville, it seems, carried these to the Board of Trade and brought back a reply. He said, among other things, that by the act American trade with the home ports of Great Britain "is intended to be left precisely upon the same footing in which it stood by the orders in council, from which the words of the proposed act are nearly taken".<sup>5</sup> Since there is nothing in the orders or in the act restricting our rights in the European trade, that trade remained open to us, except as restricted by the navigation acts. Lord Grenville said: "All European articles, the importation of which is not confined by the act of navigation to British ships, or ships of the built of the country, from whence such articles are brought, . . . will remain free to American ships, in common with all others."<sup>6</sup>

With regard to the commodities of Russia and Turkey and the enumerated articles, the act of 1660 went a step farther than the ordinance of 1651 in one respect, namely, that if merchants chose to ship the restricted goods in the vessels of the producing country, as permitted, they must pay double aliens' duties on them.<sup>7</sup>

The Act of Frauds<sup>8</sup> of 1662 added other restrictions which are

<sup>1</sup> *American State Papers, Foreign Relations*, I. 303. The orders in council had opened to American vessels the importation into the home ports of Great Britain of all American products. The error noted is qualified (1) by the fact that the restrictions upon the West-Indian trade were largely in the minds of Americans to the exclusion of clear thought on minor points; (2) by the fact that the European trade that remained unrestricted was not considerable, as is suggested farther on.

<sup>2</sup> *Annals of Congress*, First Congress, I. 183.

<sup>3</sup> *Ibid.*, 187.

<sup>4</sup> *A Brief Examination of Lord Sheffield's Observations on the Commerce of the United States* (Philadelphia, 1791), 100.

<sup>5</sup> *American State Papers, Foreign Relations*, II. 112.

<sup>6</sup> *Ibid.*

<sup>7</sup> Section ix.

<sup>8</sup> 13 and 14 Charles II., Ch. XI., *Statutes of the Realm*, V. 393.

so nearly a part of the Navigation Act that they must be considered along with it:

§ 23. And whereas some Doubts and Disputes have arisen concerning the said late Act for encreasing and encouraging of Shipping and Navigation about some of the Goods therein prohibited to be brought from Holland and the Parts and Ports thereabouts Be it enacted and declared That no sort of Wines (other than Rhenish) no sort of Spicery Grocery Tobacco Potashes Pitch Tar Salt Rozin Deale Boards Fir Timber or Olive Oyle shall be imported into England, Wales or Berwick from the Netherlands or Germany upon any pretence whatsoever in any sort of Ships or Vessels whatsoever upon penalty of the losse of all the said Goods as alsoe of Ships and Furniture.

It appears that there had been evasions of section iv. of the Navigation Act, that requiring goods of Asia, Africa, and America to be imported direct from these places, and it has been considered that this new provision was mainly intended to make absolutely impossible the importation of these goods from or by way of Holland. It was therefore construed very liberally in favor of admitting goods from Germany and Holland, of their own growth and production; thus "white-pitch" of Germany was admitted, though "pitch" was expressly prohibited, and "Rhenish wines" was construed to mean any kind of German wine. Of this section Reeves says:

Most of the articles, therefore, intended by this provision, were the productions of Asia, Africa or America; and with regard to them the prohibition was no more than a repetition of that provision in the Act of Navigation, which requires such articles to be brought from the place of their growth. If, indeed, they had undergone such a manufacturing in the Netherlands or Germany as would constitute them a manufacture of those places, they might be brought from thence under the Act of Navigation; and in respect to such articles this prohibition was wholly a new law. It was likewise a new law in regard to such articles here mentioned as were European commodities.<sup>1</sup>

A statute of George I. withdrew this prohibition from fir-timber, fir-planks, masts, and deal-boards of Germany, allowing them to be brought in by English ships, and in 1782 these articles were made subject to the same provisions as the articles enumerated in section viii. of the Navigation Act.

These restrictions which we have considered—section viii. of the Navigation Act, section xxiii. of the Act of Frauds of 1662, modified as just indicated—were practically the only restrictions put upon European trade by the navigation laws, and these remained in force down into the nineteenth century.<sup>2</sup> In 1822, as is said above, both these sections were repealed. The navigation laws were consolidated. The restrictions upon the goods of Russia and Turkey and

<sup>1</sup> Reeves, 164.

<sup>2</sup> There were some relaxations that made the importation of these restricted articles easier:



of the Netherlands and Germany were then finally dropped, but a long list of enumerated articles reappeared in the consolidation act. These articles received the new privilege of being admitted in the ships of the country from which they were imported, whether it was the country of production or not. Salt, pitch, rosin, potash, sugar, and vinegar, which formed a part of the list in this act of 1822 and of the list in the consolidation act of 1825, were omitted from the consolidation act of 1833, and some additions were made. The list and restrictions then read as follows:

The several sorts of Goods herein-after enumerated, being the produce of *Europe*; (that is to say) Masts, Timber, Boards, Tar, Tallow, Hemp, Flax, Currants, Raisins, Figs, Prunes, Olive Oil, Corn or Grain, Wine, Brandy, Tobacco, Wool, Shumac, Madders, Madder Roots, Barilla, Brimstone, Bark of Oak, Cork, Oranges, Lemons, Linseed, Rape Seed, and Clover Seed, shall not be imported into the United Kingdom to be used therein, except in *British* ships, or in Ships of the Country of which the Goods are the Produce, or in Ships of the Country from which the Goods are imported.<sup>1</sup>

This list, strange and peculiar as it appears to us a half-century removed from the particular motives that caused the inclusion of each article in its odd jumble, is found again in the consolidation act of 1845, and was not finally struck from the statute-books until 1849, though it is quite probable that after 1833 the restrictions upon their importation had been greatly modified by treaty.

Here ends the tedious examination of details. It is fully apparent that the Navigation Act put no such harsh restriction upon European trade as is commonly stated. The consequences of those

(1) It will be noted that the enumerated articles and the goods of Russia and Turkey were almost all subject to the monopolies of the trading companies; so that the gradual opening up of these exclusive rights made more English carriers available for their transport.

(2) Disputes arose whether section viii. meant to limit the foreign ships exercising the privilege of carrying the enumerated goods to the ships of the very country of produce or to those of some country under the same sovereign. The law-officers several times gave their opinions that the privilege was limited to the very country as that country stood in 1660. In 22 Geo. III., C. 78, § 3, this privilege was extended to any ship "being the property of subjects under the same sovereign as the country of which such goods are the growth", etc., although not under that sovereign in 1660.

(3) Section viii. provided that a foreign ship to have the privilege of carrying the enumerated goods must be "of the built of that Country or place of which the said Goods are the growth". This varied from other parts of the navigation laws, where ownership was sufficient, the ship being built in some other country. In *Scott vs. d'Achez*, however, the section was construed literally. This feature was relaxed by the act and section just quoted, by which it was sufficient if the ship was the "property of subjects", etc.

(4) In addition to these last two ameliorations, which made more foreign carriers available for the enumerated goods, the double aliens' duties imposed upon them if entered in foreign ships (section ix. *supra*) were removed by 24 Geo. III., C. 16, which repealed all aliens' duties.

<sup>1</sup> 3 and 4 William IV., C. 54, § II.

sweeping statements have doubtless not been fully weighed. The difference is not one of degree merely but of principle. The ordinance of 1651, which alone applied these severe restrictions, struck a blow at English commerce with the continent far out of proportion to the protection it secured to English shipping. It was fortunate that it hardly got into operation before it became a nullity.

The distinction between commerce and the carrying-trade is well worth keeping in mind. In historic discussions of navigation laws the disputants have usually arrived at two opposite opinions; the opponents of the laws asserting that all legislation intended for the protection of shipping is hurtful to commerce, and that the true prosperity of shipping arises naturally from the greatest freedom of commerce; while the advocates have earnestly contended that in the long run the growth of shipping, by an expansion of commerce, more than makes up the temporary losses, although they have usually been driven to defend their position by referring to the dependence of naval power upon the merchant marine.

It is not necessary perhaps, for the purpose in hand, to take position on this recurring issue. It will bring out the desired point of view, however, to assert, of any two acts, that commerce may suffer under the one, and suffer more under the other. Thus the ordinance of 1651 was far more severe toward European commerce than was the Navigation Act. Not only were foreign carriers limited by the ordinance to carrying to England the produce of their own people; but English carriers were restricted, in their commerce with the four quarters of the globe, to shipping their cargoes solely in the place of production, growth, or manufacture, or in the usual place of first shipment; and not only were they prohibited the use of many convenient entrepôts of foreign goods, but if they should not be able to complete a cargo in the goods of the port in which they were loading, they had to sail light-freighted rather than take on any other goods if these happened to be the produce of some other country. The chance which the English importer, or the foreign exporter of European commodities to England, had of taking advantage of the cheapest, most convenient, and most available carriers was thus greatly reduced. The restriction upon carriers was so stringent as seriously to cramp commerce.

While the act of 1660, on the other hand, was probably as completely protective of English shipping, it did not deal so severely with the transactions of commerce. That it was equally protective to shipping is urged by a few writers,<sup>1</sup> who point out that the articles

<sup>1</sup> Adam Smith, *Wealth of Nations* (McCulloch's edition of 1839), 203; J. R. McCulloch, Note XI., in his edition of the *Wealth of Nations*, 530; W. S. Lind-

enumerated in section viii. were the bulky goods of commerce and gave rise to the greatest part of the ocean carrying-trade. From this freight the Dutch were effectually excluded. The importance of the bulky goods in the carrying-trade was certainly considered, and it is well pointed out by Sir Josiah Child in a passage which seems to me to refer partly to the articles enumerated in section viii. :

No trades deserve so much care to procure, and preserve, and encouragement to prosecute, as those that employ the most shipping, although the commodities transported be of small value in themselves ; for, first, they are certainly the most profitable ; for besides the gain accruing by the goods, the freight, which is, in such trades, often more than the value of the goods, is all profit to the nation, besides they bring with them a great access of power (hands as well as money) many ships and seamen being justly the reputed strength and safety of England.<sup>1</sup>

That the act of 1660 was much more favorable to commerce needs little argument. It permitted foreign merchants in any part of Europe to take advantage of any carrier, of any nationality whatsoever, in sending to England any European goods whatever, except those of Russia and of Turkey and the articles enumerated ; both foreign and English ships being free to make up cargoes of general merchandise, or complete their cargoes with greater freedom. Even the excepted goods could be shipped in the privileged vessels from any European port, and not exclusively from ports of the producing country. This difference between the principles of enumeration and of total restriction was an increasing one, for the growth of industry and other economic changes multiplied beyond measure the variety of articles in sea-borne commerce, while the enumerated list changed little.

Finally it may be said that there is the widest difference theoretically between the principle of 1651 and the principle underlying the act of 1660. The former principle, carried to its logical conclusion, in its extension and adoption by all nations, would result in the restriction of the carrying of any commodities, the objects of international trade, from the producing directly to the consuming nation in their own vessels exclusively ; while the latter recognizes the feeling that international commerce ought in general to be free, and that restrictions are exceptional. DUDLEY ODELL MCGOVNEY.

say, *History of Merchant Shipping and Ancient Commerce*, (4 vols., London, 1874), II. 189. These three writers give evidence of correct interpretation of the act. Smith's statement is brief, Lindsay's inaccurate in detail ; McCulloch's is substantially correct. Blackstone, *Commentaries* (Cooley's ed.), I. 419, makes a brief but correct reference. A full and correct statement is found in the report on Commercial Regulations of Foreign Countries, submitted by President Monroe to the Senate, December 14, 1819, *American State Papers, Commerce and Navigation*, II. 199-334.

<sup>1</sup> *A New Discourse of Trade*, preface, xviii., first published in 1665. The reference is to the Glasgow edition of 1751.